

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
WESTERN DIVISION

MICHAEL DWAYNE McKINSTRY, )  
v. )  
Plaintiff, )  
DAVID ABSTON, *et al.*, )  
Defendants. )  
Case No. 7:10-cv-02256-WMA-PWG

**MEMORANDUM OPINION**

The magistrate judge filed a report on November 16, 2010, recommending that this action be dismissed without prejudice for failing to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1). Although the plaintiff was advised of his right to file specific written objections, he has failed to respond to the report and recommendation.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the Court is of the opinion that the magistrate judge's report is due to be and hereby is ADOPTED and the recommendation is ACCEPTED. Accordingly, this action is due to be dismissed without prejudice for failing to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1). A Final Judgment will be entered.

DATED this 14th day of December, 2010.

William M. Acker  
WILLIAM M. ACKER, JR.  
UNITED STATES DISTRICT JUDGE